

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-212533**DATE:** May 22, 1984**MATTER OF:** Compucorp**DIGEST:**

1. Protest that equipment offered by proposed awardee under step one of two-step procurement does not meet solicitation's mandatory specifications is timely even though initially submitted more than 2 months after contracting agency announced in Commerce Business Daily (CBD) that protester's and proposed awardee's offers under step one were both considered acceptable. CBD announcement did not indicate what equipment had been offered and protester states it was first told what proposed awardee's offered models were on or about step-two bid opening date. In the absence of any evidence to show that protester knew basis for protest earlier, protest initially filed within 10 days after protester was told what models its competitor had offered meets timeliness requirements of section 21.2(b)(2) of GAO Bid Protest Procedures.
2. Issues raised in supplemental protest letter filed 2 months after initial protest must independently satisfy timeliness requirements. Even though protester filed supplemental protest within 10 days after receipt of information from contracting agency under Freedom of Information Act (FOIA), record shows that FOIA information did not reveal basis for protest and protester--which was very familiar with equipment offered by proposed awardee as evidenced by the initial protest--should have known the new issues raised in supplemental letter when it filed initial protest. Therefore, later-raised issues are untimely and will not be considered.

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3. Protest that word processing system offered by low bidder under two-step procurement should have been rejected as technically not acceptable is denied where GAO cannot find that contracting agency's determination of low bidder's technical acceptability was unreasonable or inconsistent with solicitation's requirements.

Compucorp protests the Air Force's proposed award of a contract to CPT Corporation (CPT) pursuant to invitation for bids (IFB) No. F11623-83-BA009, issued by Scott Air Force Base, Illinois, the second step of a formally advertised two-step procurement for purchase of 287 word processing units. During the first step of this procurement, a request for technical proposals (RFTP) (No. F11623-82-R-0048) was issued on November 16, 1982, and 14 proposals were received by the closing date of February 28, 1983. The Air Force evaluated the proposals and determined that only the proposals submitted by Compucorp and CPT were acceptable. Accordingly, the subject IFB initiating step two was issued on May 3 to Compucorp and CPT, which submitted bids of \$2,149,494 and \$1,988,109, respectively. Compucorp contends that, even though CPT offered its word processing units at a lower total price, CPT is not eligible for award because its offer does not meet a number of mandatory technical requirements which were set forth in the RFTP.

The protest is denied in part and dismissed in part.

The Air Force and CPT argue that Compucorp's protest is untimely and should not be considered on its merits. Basically, the Air Force and CPT contend that Compucorp should have known its basis for protest on May 13 when the Air Force published an announcement in the Commerce Business Daily (CBD) stating that only CPT and Compucorp were considered technically acceptable under step one of the procurement and were selected to bid under step two. These two parties contend that, since Compucorp filed its initial protest enumerating 14 alleged technical deficiencies in CPT's offer in our Office on July 29 and filed a supplemental protest alleging seven other technical deficiencies

in CPT's offer in our Office on September 28, the protest is untimely under section 21.2(b)(2) of our Bid Protest Procedures (4 C.F.R. part 21 (1983)), which requires filing "not later than 10 days after the basis for protest is known or should have been known, whichever is earlier." The Air Force points out that CPT's equipment is available in the public marketplace and concludes that, as a competitor of CPT, Compucorp should have been familiar with CPT's equipment and should have known what CPT offered under step one of this procurement. CPT argues that Compucorp's initial protest letter dated July 29 shows that Compucorp was very familiar with CPT's equipment because it included "14 separate and specific allegations of non-compliance by CPT's Step-One technical proposal" which "clearly demonstrated that it was familiar with its competitor's equipment." The Air Force and CPT cite our decisions in ACCESS Corporation, B-189661, February 3, 1978, 78-1 CPD 100, and Ingersoll-Rand Company, B-189071, October 3, 1977, 77-2 CPD 254, as support for their position that Compucorp, a firm which was familiar with CPT's equipment, had to protest within 10 days after publication of the CBD notice that CPT was considered to be acceptable by the Air Force.

Compucorp disputes CPT's and the Air Force's charge that Compucorp should have known, by virtue of its familiarity with CPT's product lines, that CPT had offered equipment which was technically unacceptable from the May 13 CBD announcement. Compucorp states that at no time prior to bid opening was it aware of the equipment models offered by CPT under this two-step procurement. Compucorp states that it first became aware of the equipment models offered by CPT on or about July 22 (the date of bid opening) when a Compucorp staff member was told by a CPT staff member that CPT's bid would be based upon the equipment models which Compucorp alleges do not meet the solicitation's mandatory requirements. Therefore, Compucorp argues that its initial protest letter, filed on July 29, is timely since it was filed within 10 days after Compucorp knew which equipment models CPT offered. Furthermore, Compucorp contends that its supplemental protest, filed September 28, is timely because it was filed in our Office within 10 days of Compucorp's receipt of certain information it had requested of the Air Force pursuant to the Freedom of Information Act (FOIA).

We conclude that Compucorp's initial protest letter was timely filed. The decisions in ACCESS Corporation, supra, and Ingersoll-Rand Company, supra, cited by the Air Force and CPT, are readily distinguishable. In those cases, a considerable amount of evidence was produced to show that the protesters were very familiar with the awardees' products and actually knew which equipment had probably been bid in the second step of those two-step procurements more than 10 days before filing their protests. Moreover, in those cases, the protesters did not deny that they had such knowledge nor rebut the evidence which showed that the protesters should have known their bases for protest more than 10 days prior to filing the protests. Here, Compucorp specifically denies that it knew what equipment CPT offered until that information was revealed to a Compucorp employee by a CPT employee on or about the bid opening date, and no evidence has been presented to show prior knowledge by Compucorp. As we stated in ACCESS Corporation, supra, a protester's reasonable statement regarding when it became aware of its grounds for protest will be accepted by our Office in the absence of evidence to the contrary. Since Compucorp did not learn that a particular CPT product had been offered and was considered acceptable by the Air Force until it was so informed by a CPT employee on or about July 22, its initial protest, filed within 10 working days after it learned that information, was timely filed. See Hyster Company, 55 Comp. Gen. 267 (1975), 75-2 CPD 176.

Concerning Compucorp's supplemental protest letter, we conclude that it was untimely filed and, therefore, will not consider the new issues raised therein on the merits. Compucorp contends that its September 28 supplemental protest should be considered timely because this letter was filed in our Office within 10 days after Compucorp received material from the Air Force under the FOIA. Compucorp alleges that it first became aware of these bases for protest upon receipt of the FOIA information.

Where a supplemental protest letter raises new and independent grounds for protest which were not raised in the initial timely protest letter, the later-raised bases for protest must independently satisfy our timeliness

requirements. See Guardian Electric Manufacturing Company, B-191871, November 30, 1978, 78-2 CPD 376. Our Office will consider a protest against agency action under step one of a two-step procurement, even if filed after step-two bid opening, as long as the protester did not have an opportunity to know its bases for protest more than 10 working days prior to filing its protest. Hyster Company, supra; 4 C.F.R. § 21.2(b)(2). Thus, a protest based upon issues which became apparent to the protester upon receipt of information requested from the contracting agency within a reasonable time after bid opening under the FOIA or otherwise will be considered timely if filed within 10 days after receipt of the information which revealed the bases for protest. See Guardian Electric Manufacturing Company, supra; see also Hyster Company, supra.

In our opinion, the new issues raised in Compucorp's September 28 letter are untimely because Compucorp has not shown that it first knew these bases for protest after it received information from the Air Force pursuant to the FOIA. CPT has pointed out that only a very small portion (less than six pages) of CPT's proposal was released to Compucorp under the FOIA and Compucorp has not refuted this statement. Our review of these portions of CPT's proposal yields nothing which should have revealed the new protest issues. It is also clear from Compucorp's initial submission that Compucorp was extremely familiar with CPT's equipment and knew what equipment CPT was actually offering at the time of the initial filing. In its initial submission, Compucorp was able to raise 14 very detailed technical arguments which made it clear that Compucorp not only knew what CPT had offered, but also that Compucorp was well informed as to the technical aspects of CPT's offered equipment. Based upon Compucorp's own statement that it was told what CPT was offering by a CPT employee on or about July 22, Compucorp's intimate knowledge of the technical aspects of CPT's offered equipment as shown in Compucorp's initial submission to our Office, and our review of the very limited FOIA material upon which Compucorp allegedly based its September 28 filing, we conclude that Compucorp should have known all of its bases for protest prior to receipt of the FOIA material--as early as July 22, when it learned which products CPT had offered. In spite of Compucorp's statement that it first learned its new bases for protest from the FOIA material, we conclude that the FOIA material

was not the source for Compucorp's knowledge of the products CPT had offered. Therefore, we find that Compucorp's September 28 supplemental protest letter was untimely because it was filed in our Office more than 2 months after Compucorp should have known its bases for protest. See ACCESS Corporation, supra; Ingersoll-Rand Company, supra. Accordingly, we will only consider the material submitted by Compucorp on September 28 insofar as it is further support for issues raised in the initial timely protest letter. Guardian Electric Manufacturing Company, supra.

In its later submissions and at an informal conference on this protest, Compucorp withdrew a number of the issues it had initially raised. Turning to the merits of Compucorp's remaining allegations, we have recognized that it is inherent in two-step formal advertising that the technical approaches proposed by offerors may vary considerably. Hyster Company, supra. In determining which proposals are technically acceptable, we have frequently stated that it is neither our function nor practice to conduct a de novo review of technical proposals and make an independent determination of their acceptability. The evaluation of proposals is the function of the procuring agency, requiring the exercise of informed judgment and discretion. Our review is limited to examining whether the agency's determination was fair and reasonable and consistent with the stated requirements. See A.B. Dick Company, B-211119.3, September 22, 1983, 83-2 CPD 360; KET, Inc., B-190983, December 21, 1979, 79-2 CPD 429; see also Hyster Company, supra.

Compucorp contends that the word processing equipment offered by CPT does not meet the RFTP's mandatory requirement that "The CRT must have the capability to visually identify fields of text marked for deletion, movement, and storage purposes." Compucorp argues that CPT's equipment does not have highlighting capabilities, arrows, or block markers necessary to identify those portions of the text which are to be deleted, moved, or stored. Compucorp also argues that the CPT system is unacceptable because it functions by use of a "buffer" (a high-speed area of storage that is temporarily reserved for use in performing input/output operations) that allows only seven lines of text to be viewed by the operator. Compucorp charges that, if more

than seven lines of text are to be deleted, moved, or stored, CPT's equipment cannot visually identify the entire field of text as required.

This requirement does not specify the method of identifying text which is to be deleted, moved, or stored, and highlighting, arrows, or block markers are not required in order to be considered acceptable. All that is necessary is that the word processing screen be able to identify text to the operator in some way. CPT's word processing screen is divided into two portions. The upper portion or "page area" shows the operator exactly what has just been typed; the lower portion or "preview area" shows the operator text on which functions such as deletion are to be performed. The total number of lines of text displayed in both areas of the screen is 51, and the operator can allocate up to 50 lines in either area. Compucorp's charge that only seven lines of text can be viewed by the operator is incorrect since the operator can allocate up to 50 lines in the preview area for viewing as the operator performs various editing functions. The Air Force determined that this number of lines was adequate for its editing needs. Moreover, the CPT equipment can identify any amount of characters to be moved, deleted, etc., through the use of a series of keys with which the operator chooses the character, word, line, paragraph, or page which is to be edited. The Air Force also determined that this method of identification was sufficient to meet the solicitation's requirement. We conclude that the Air Force determinations in this regard were reasonable and that the Air Force did not abuse its discretion in considering CPT's offer to be acceptable.

Compucorp also contends that CPT's word processor does not meet the mandatory requirement set forth in the RFTP that:

"The CRT must be able to scroll, or functionally equivalent, vertically, forward and backward, through single and multiple page documents so as to allow uninterrupted examination of text."

Compucorp asserts that CPT's system does not have the ability to "scroll" (the ability to electronically move through a document) backwards. Moreover, Compucorp contends that, since CPT word processing equipment works with code keys which are limited to a maximum of 10,000 characters or two pages of text, if the operator desires to scroll through a document containing more than two pages, the operator must strike the keys a number of times. This, asserts Compucorp, is not "uninterrupted examination of text" as required by the RFTP.

The CPT reference manual for the offered equipment states that its screen holds a total of 10,000 characters, or three to five typed pages. It also shows that, within the confines of the 10,000 character segment accommodated by the word processing screen, the system allows both forward and backward scrolling by line, paragraph, or page at a time. When scrolling a document consisting of more than 10,000 characters, the CPT system merely requires an additional command from the operator at the beginning of the scrolling to tell the machine to empty the buffer of each 10,000-character segment as scrolling is completed, to recall the next 10,000-character segment of the document, and to continue scrolling. The Air Force determined that its mandatory requirement was adequately satisfied by this system. In view of the minimal operator actions required to scroll more than 10,000 characters, we believe that the scrolling operation is basically "uninterrupted" and find that the Air Force determination that CPT's equipment met the basic requirement was reasonable.

Compucorp further contends that CPT's offered word processors do not meet the mandatory requirement set forth in the RFTP that the operating system:

" . . . must be capable of adjusting text output to the printer to produce flush left and right boundaries in both single and dual column format, without manual interventions by the system operator."

Compucorp charges that this feature is not available on commercially available CPT software. According to Compucorp, manual intervention by the operator is required when using CPT equipment in dual column format in that the

operator must first print column one, then manually roll the paper back, then print column two.

The Air Force and CPT respond that Compucorp is combining two different tasks--"formatting of text" and "printing of text"--and arguing that the requirement applies to both, when, in actuality, the requirement only applies to the formatting task. "Formatting of text" is, basically, the internal manipulation of recorded text to conform to certain set parameters--in this case, the set parameters would be flush left and right boundaries in either single or dual column format. "Printing of Text" refers to the mechanical transfer of recorded text to the paper. According to the Air Force, this requirement was intended to apply only to formatting, not printing. As evidence of its intent, the Air Force points out that the requirement was placed in the RFTP under the heading "Operating System" rather than the heading "Printer," which immediately precedes the "Operating System" section. The Air Force determined that CPT's equipment and software were capable of formatting the recorded text without operator intervention. Furthermore, the Air Force reports that "The normally manually performed operations of paper insertion, adjustment and alignment are acceptable."

It is clear from the CPT reference manual that an operator can command the word processor to format recorded text in more than one column with flush left and right boundaries. CPT argues that its printer can automatically reverse feed the paper after having printed column one and then can automatically print column two; Compucorp, of course, disputes this. It is unclear to us, after reviewing CPT's reference manual, whether paper feed can be accomplished automatically as CPT contends. However, we are persuaded by the Air Force's argument that the automatic feature was only meant to apply to the formatting task and that manual intervention was intended to be permissible in the printing function. In our opinion, positioning this requirement under the "Operating System" heading rather than the "Printer" heading should have reasonably conveyed to all offerors the Air Force's intention to treat these two tasks as separate and to require only formatting in dual columns to be done without operator intervention. See A.B. Dick Company, supra; see also New England Telephone and Telegraph Company, 55 Comp. Gen. 746 (1980), 80-2 CPD 225.

Accordingly, we conclude that the Air Force determination that CPT's offer met this particular requirement was not unreasonable under the terms of the RFTP.

An additional alleged deficiency in the CPT proposal concerns the mandatory requirement set forth in the RFTP which states:

"The system must be able to automatically fill-in preprinted forms. The system is not required to display the layout of the form but must not accept more data than a form field can accept and must automatically arrange data for proper alignment on printing."

Compucorp contends that CPT's system is deficient because it offers no method of not accepting more characters than the form field can accept.

The Air Force and CPT responded to this allegation by stating that CPT provides two methods for filling in preprinted forms. The first method allows the operator to fill in the form fields (spaces) in preprinted forms without any restriction on the number of characters which can be typed into a space. The second method permits the operator to type data into a space, but restricts the number of characters which can be typed so that no more data can be typed into the space than it is designated to accept. The Air Force determined that CPT's proposed equipment met the RFTP's requirement.

We have examined CPT's reference manual and ascertained that the proposed CPT system does indeed contain many special features designed especially for use in printing and filling in preprinted forms. Basically, the operator can use the CPT equipment like a typewriter to fill in blank spaces on a form or the operator can copy the form exactly and record it on disk (creating a template) for many future uses. It is clear that the operator can create the template in a manner which preserves blank spaces of either limited length (for example, a space used for social security numbers) or variable length (for example, a space used for names). However, it is unclear from our review of the reference manual whether the CPT equipment would actually prevent the insertion of too many characters into a limited

space or merely indicate to the operator that too many characters had been inserted. CPT and the Air Force insist that the proposed CPT equipment can be commanded to prevent insertion of too many characters into a limited space in a form through a series of maneuvers and commands performed by the operator when typing the template. Without a demonstration of the method to be used, we cannot tell from the manual alone if this is so. What is clear, however, is that the CPT word processors will be able to serve the Air Force's purposes in this regard--at a minimum, the equipment reminds the operator that space limitations are about to be exceeded. Since we have, essentially, a technical dispute between Compucorp's experts on the one hand and the Air Force's and CPT's experts on the other as to whether CPT can meet this requirement completely, we are not able to conclude that the Air Force's determination that CPT equipment is acceptable is unreasonable. See London Fog Company, B-205610, May 4, 1982, 82-1 CPD 418. Accordingly, we will not question the Air Force determinations on this protest.

Compucorp also charges that CPT's proposal is deficient because it cannot meet the mandatory option requirement set forth in the RFTP which, in reference to the third configuration which was to be included in each proposal, stated in pertinent part that:

"Processors will possess all capabilities of configurations one and two, except TEMPEST and disc drives, and have the capability to be coupled into a network of three to eight processors which can interactively transfer information, share stored data and share the use of printers, communications equipment, OCRs, etc."

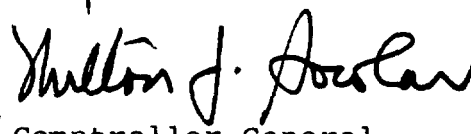
Compucorp contends that one of the using activities, Travis Air Force Base, requires nine workstations, but that CPT can only offer a maximum of eight workstations utilizing its storage system known as WORDPAK. Compucorp charges that CPT therefore will have to use two WORDPAK systems, splitting the workstations, but not allowing all nine workstations to share the same information without using telecommunications capabilities.

The Air Force acknowledges that the CPT system using WORDPAK allows direct hardwired connection of only eight workstations. However, through the use of telecommunications, an almost unlimited number of workstations can be provided access to the processor. The Air Force determined that CPT's system was acceptable because the use of the telecommunications was not prohibited by the RFTP.

CPT contends that Compucorp is wrong because it incorrectly states that the standard industry definition of networking does not include telecommunications and, accordingly, telecommunications is allowable. CPT also responds that, since the RFTP does not specify a particular configuration to perform the tasks specified, and because its proposed system can perform all required tasks, its system was properly determined to be acceptable.

We agree with the Air Force that there is nothing in this specification to preclude the use of telecommunications to perform all required tasks. Thus, we need not decide whether CPT intends to use telecommunications since the specification does not prohibit it. We note that CPT contends that its system does not use telecommunications and that the configuration proposed will cause the ninth workstation to have all features which the hardwired workstations have. Accordingly, we cannot find that the Air Force's determination that CPT's proposal met this requirement was unreasonable.

In view of the above findings, we deny Compucorp's protest in part and dismiss it in part.

for 
Comptroller General
of the United States